



BOULT ■ CUMMINGS®
CONNERS ■ BERRY PLC

RECEIVED

2005 MAR 29 PM 2:50

TRA DOCKET ROOM

Henry Walker
(615) 252-2363
Fax (615) 252-6363
Email hwalker@boultcummings.com

March 29, 2005

Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Re: *Complaint of XO Tennessee, Inc. Against BellSouth and Request for Expedited Ruling and for Interim Relief*
Docket number: 04-00306

Dear Chairman Miller:

At its regularly scheduled agenda conference on February 28, 2005, the Tennessee Regulatory Authority ("Authority") heard the above-captioned complaint filed by XO Tennessee, Inc. ("XO") against BellSouth Telecommunications, Inc. ("BellSouth"). At that time, the Authority granted XO's request for interim relief, requiring BellSouth to convert special access circuits to unbundled loops and to provide for a retroactive true-up.

The purpose of this letter is to ask the Authority to clarify the scope of BellSouth's true-up obligations. At a minimum, XO believes that the February 28 ruling means that the UNE loop rate applies, effective February 28, to all conversion requests pending as of that date and to all conversion requests made on or after February 28, effective thirty days after the request is made. There are also, of course, other true-up issues which need to be addressed either in a written order memorializing the February 28 decision or in a final order issued following a hearing on the merits of XO's complaint. If the authority chooses to address those matters now, XO has summarized below the various "true-up" issues which the parties must resolve and XO's position on each issue.

There are two types of rates subject to a true-up: (1) the rate for converting a special access line to a UNE loop, and (2) the rate paid for the use of the line itself.

In the first category, the "conversion rate," XO has suggested that all conversions be billed, for the time being, at the "switch as is" rate contained in the parties' current interconnection agreement. Once the TRA has established a permanent "just and reasonable" conversion rate, as required by the FCC, there should be a true-up to cover all conversions requested by XO since the effective date of the *Triennial Review Order* ("TRO"),¹ including all requests pending on that date.

In the second category, the rate paid for the use of each circuit, the refund obligation arises from the difference between the rate charged for a "special access" line and the lower rate charged for the same line after it is converted to a "UNE loop." There are three time periods to consider:

- (1) Conversion requests pending on the effective date of the *TRO*.

¹ *In re Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al*, CC Docket Nos. 01-338, 96-98 & 98-147, Report and Order and Order on Remand (rel. Aug. 21, 2003).

March 29, 2005

Page 2

- (2) Conversion requests made after the effective date of the *TRO* but prior to the TRA's February 28, 2005, ruling
- (3) Conversion requests made on or after the Authority's February 28, 2005, ruling.

(1) In regard to the first true-up period at issue, Paragraph 589 of the *TRO* states that the Bell carriers are directed to complete any conversion requests pending on the effective date of the order and make an adjustment in the price of the line retroactive to the date of the order. The order states, "To the extent pending requests have not been converted, however, competitive LECs are entitled to appropriate pricing up to the effective date of this Order." At that time, XO had a number of pending conversion requests which BellSouth had refused to honor. Therefore, according to the FCC's ruling, those pending orders must now be completed and appropriate pricing for the circuits applied retroactively to the effective date of the Order.

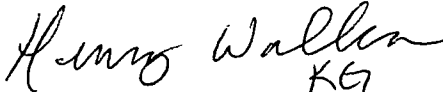
(2) The second period encompasses conversion requests made after the *TRO* was issued but before the Authority's ruling on February 28, 2005. Here again, the *TRO* language is instructive. The FCC stated that the Bell carriers should process conversion requests within "one billing cycle." *TRO* at paragraph 588. Therefore, BellSouth should bill XO the reduced, UNE rate within thirty days of each conversion request and make appropriate retroactive adjustments.

(3) Conversions within the third period (requests made on or after February 28, 2005) should be handled similarly. Any special access circuit which XO has requested be converted to a UNE loop should be priced at the UNE rate no later than thirty days after XO's request.²

In seeking the Authority's clarification of this matter, XO hopes to remove any uncertainty relating to the rights and obligations of the parties as to the true-up. If, however, the Authority is not prepared to address all of these issues in the context of granting the motion for interim relief, XO asks that the Authority clarify that these issues will be addressed in a final order.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker

HW/kg
cc: Guy Hicks

² Even if BellSouth and XO disagree as to whether the requested line is eligible for conversion, BellSouth is required to honor the request in accordance with the provisions of the TRRO, paragraph 234